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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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E-filing

Attorneys for Plaintiffs Jose Barriga,
Jesus Torres Uribe, and Joel Mendoza

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

CV 08

1700

Case No.:

BZ

JOSE BARRIGA, JESUS TORRES URIBE,
AND JOEL MENDOZA

Plaintiffs,

vs.

PREFERRED PLUMBING, INC.; JAMES
LUIS RUIZ; EMILIO RUIZ; AND
FEDERICO RUIZ

Defendants

COMPLAINT & DEMAND FOR JURY TRIAL

Federal FLSA Claim:

1. Failure to pay overtime and
minimum wage: 29 U.S.C. §§ 207, 216(b),
and 255(a);

California State Claims:

2. Failure to pay overtime and
minimum wages (California Labor Code §§
1194(a); 1815);

3. Breach of Contract

4. Failure to Provide Accurate Pay
Stubs and Records; Submitting False and
Fraudulent Certified Payroll Records
(California Labor Code §§ 226, 1174, 1776,
IWC Wage Order No. 16 § 6);

5. Failure to Pay Wages Due at End of
Employment (California Labor Code §§ 201,
203); and

6. Violation of California Business
and Professions Code §§ 17200.

NATURE OF CLAIM

1. This is a action by three construction workers, JOSE BARRIGA, JESUS TORRES URIBE, AND JOEL MENDOZA, who worked as construction workers for Defendants in the craft of Plumbers and who are bringing claims for unpaid wages, unpaid overtime wages, unpaid prevailing wages, interest, penalties, damages and attorneys' fees and costs arising out of the failure to pay all wages for labor discharged including but not limited to overtime and minimum wages as required by the Fair Labor Standards Act and California law. The plaintiffs seek compensatory damages for unpaid wages in addition to liquidated damages under 29 U.S.C. § 216(b), waiting time penalties under California Labor Code § 203, a liquidated damages assessment under California Labor Code § 1194.2, penalties under California Labor Code § 226 (wage stub violations), attorney's fees, costs, and pre-judgment interest pursuant to California Labor Code § 1194(a) and 29 U.S.C. § 216(b). Plaintiffs also seek premium wages, which are minimum wage obligations, for the failure to "authorize or permit" them from taking rest breaks.

2. Plaintiffs claims can be summarized as follows:

(a) Preliminary and post-liminary labor claims (Overtime FLSA): When Plaintiffs were employed by Defendants, at various times they were required to show up to the shop and began to perform compensable labor and were not paid until they showed up to a job site. This included: (1) loading tools, material and equipment; (2) picking up paperwork or having work related meetings; (3) going to various vendors to purchase or pick up tools, material or equipment; and (4) transporting themselves, tools, material or equipment to a job site in a company truck. At the end of the day, Plaintiffs were not paid for their compensable labor to return the work trucks, materials, tools and themselves to the construction shop. This leads to overtime and wage claims as Plaintiffs' actual work week was over 40 hours and they were not paid overtime wages.

1 (b) Shaving or Reducing Work Hours (Overtime /FLSA): When Plaintiffs worked in
2 Prevailing Wage or Public Works projects, they were not paid for all hours worked at the
3 construction job site. This was done to reduce the rate of pay so that workers would be paid at
4 the correct prevailing wage rate for the craft of work they discharged but for a lesser number of
5 hours. This leads to FLSA overtime exposure as Plaintiffs' actual work week of compensable
6 labor was over 40 hours.

7 (c) Misclassification and Failure to pay prevailing wages (Overtime /FLSA): Plaintiffs
8 performed labor as plumbers on various Public Works construction projects which require the
9 payment of Prevailing Wages by operation of contract and State Law. On those projects,
10 Defendants failed to pay the Prevailing Wages, for the type or classification of labor Plaintiffs
11 discharged, as determined and disseminated by the State of California's Department of
12 Industrial Relations because they were paid as Laborer Area 1 Group 1 workers, with a pay
13 scale of \$36.58, when they should have been paid as Plumbers with a pay scale of \$57.70. This
14 leads to FLSA overtime exposure as Plaintiffs' actual work week of compensable labor was
15 over 40 hours.

16 SUBJECT MATTER JURISDICTION AND VENUE

17 3. This Court is a proper venue, since all events giving rise to this lawsuit have occurred in
18 this district.

19 4. Subject matter jurisdiction of this action of this Court is based upon Fair Labor
20 Standards Act, 29 U.S.C. §§201 et. seq. and the pendant jurisdiction of this Court.

21 PARTIES

22 5. Plaintiffs JOSE BARRIGA, JESUS TORRES URIBE, AND JOEL MENDOZA were
23 and at all relevant times herein are individuals over the age of eighteen employed during the
24 statute of limitations in this action.
25

1 6. Plaintiffs are informed and believe and therefore allege, that at all times mentioned
2 herein Defendants PREFERRED PLUMBING, INC.; JAMES LUIS RUIZ; EMILIO RUIZ;
3 FEDERICO RUIZ are engaged in the business of plumbing construction, maintenance and
4 repair in Northern California with particularity in Alameda, Contra Costa and San Mateo
5 Counties. Defendant JAMES LUIS RUIZ is the Responsible Managing Officer ("RMO"), and
6 license holder, of PREFERRED PLUMBING, INC. for licensing purposes with the State of
7 California Contractors State Licensing Board ("CSLB").

8 7. Plaintiffs are informed and believe and thereupon alleged that PREFERRED
9 PLUMBING INC.; JAMES LUIS RUIZ; EMILIO RUIZ; and FEDERICO RUIZ, were hired
10 to perform plumbing in execution of various Public Works projects ("PROJECTS") funded in
11 whole or in part by the public funds which contains a Prevailing Wage obligation by both
12 contract and operation of law. Plaintiffs all worked on the Hamilton Project in Menlo Park
13 California, San Mateo County, and were not paid the proper prevailing wage and were not paid
14 for all hours worked.

15 8. Plaintiffs are informed and believe and based thereon allege that PREFERRED
16 PLUMBING INC.; JAMES LUIS RUIZ; EMILIO RUIZ; and FEDERICO RUIZ, have jointly
17 employed Plaintiffs as construction workers on the PROJECTS and in other repair, maintenance
18 and construction work throughout their employment with PREFERRED PLUMBING, INC..
19 Plaintiffs are informed and believe and based thereon allege that PREFERRED PLUMBING
20 INC.; JAMES LUIS RUIZ; EMILIO RUIZ; and FEDERICO RUIZ, are related and in common
21 control of a same group of people, that their employment with PREFERRED PLUMBING,
22 INC. were not independent and disassociated, but as result of arrangement between
23 PREFERRED PLUMBING INC. and JAMES LUIS RUIZ; EMILIO RUIZ; and FEDERICO
24 RUIZ, each was acting on behalf of or in the interest of the other in relation to the employment
25

1 of each Plaintiff, and that at all times relevant herein stated, Plaintiffs were under the control of
2 all Defendants.

3 9. Plaintiffs are informed and believe and therefore allege that PREFERRED PLUMBING
4 INC.; JAMES LUIS RUIZ; EMILIO RUIZ; and FEDERICO RUIZ, constitute an integrated,
5 unified economic enterprise in bidding, contracting, managing labor relations with respect to
6 various construction projects, including the PROJERCT for which Plaintiffs were not properly
7 paid minimum prevailing wage and/or overtime wages.

8 10. Plaintiffs hereinafter collectively refer to PREFERRED PLUMBING, INC.; JAMES
9 LUIS RUIZ; EMILIO RUIZ; FEDERICO RUIZ, as JOINT EMPLOYER DEFENDANTS.
10 Plaintiffs seek joint and severable liability of JOINT EMPLOYER DEFENDANTS for the
11 wages owed Plaintiffs.

12 11. Plaintiffs are informed and believe and therefore allege that certain Defendant JAMES
13 LUIS RUIZ; EMILIO RUIZ; and FEDERICO RUIZ and each of them, owned, controlled and
14 operated Defendant PREFERRED PLUMBING, INC.. Plaintiffs are further informed and
15 believe and based thereon allege that PREFERRED PLUMBING, INC. was operated in such
16 that each was the alter-ego of the other, that a unity of interest exists between them such way
17 that in equity any separateness of form should be disregarded to prevent fraud and injustice.

18 12. Plaintiffs are informed and believe and therefore allege that adherence to the separate
19 existence of PREFERRED PLUMBING, INC. as entities distinct from each other, and distinct
20 from Defendant JAMES LUIS RUIZ; EMILIO RUIZ; and FEDERICO RUIZ, and each of
21 them, would permit an abuse of the corporate privilege and would sanction a fraud in that said
22 Defendants, and each of them, while acting as principle owners, shareholders, agents, officers
23 employees and/or servants of PREFERRED PLUMBING, INC. knowingly performed the
24 following: (1) engaged in wage and hour fraud against employees of PREFERRED
25 PLUMBING, INC., including Plaintiffs; (2) acted to conceal the fact that Plaintiffs and/or their

1 fellow employees were not paid prevailing wages by submitting falsified payroll records to the
 2 awarding agencies; (3) underbid the subcontracts and/or contracts for the PROJECTS with
 3 knowledge that the bid was insufficient to pay Plaintiffs and/or other fellow employees'
 4 prevailing wages; and (4) underbid the subcontracts and/or contracts for the PROJECTS in
 5 order to gain an unfair advantage over the competition in being awarded the subcontract and/or
 6 contract for the PROJECTS. Said Defendants' acts or omissions thereby subjected JOINT
 7 EMPLOYER DEFENDANTS to criminal and civil liability for its failure to pay minimum
 8 prevailing wages, tax fraud, insurance fraud, and numerous other wage and hour violations.

9 13. Plaintiffs are informed and believe and therefore allege that certain JOINT EMPLOYER
 10 DEFENDANTS are jointly and severally liable under for the underpayment of prevailing wages
 11 and resulting assessments under California Labor section 1722.1 which states:

12 For the purposes of this chapter, "contractor" and
 13 "subcontractor" include a contractor, subcontractor, licensee,
 14 officer, agent, or representative thereof, acting in that capacity,
 15 when working on public works pursuant to this article and Article 2
 16 (commencing with Section 1770).

17 GENERAL ALLEGATIONS

18 14. JOINT EMPLOYER DEFENDANTS employed Plaintiffs at all relevant times within
 19 the statute of limitations in this action various the PROJECTS and on other construction, service
 20 or maintenance repair work.

21 15. With respect to known PROJECTS as of the filing of this action, they are as follows:

22 (a) Hamilton Project Menlo Park.

23 16. JOINT EMPLOYER DEFENDANTS compensated Plaintiffs for their labor on the
 24 PROJECT at a rate of pay below the prevailing wage rate of pay for the classification of their
 25 labor. This was accomplished by various schemes including but not limited to: (1) not paying
 preliminary and postliminary labor; (2) reducing or shaving the number of hours worked on any

1 PROJECT; and (3) paying the incorrect prevailing wage rate for the classification of work
2 discharged.

3 17. JOINT EMPLOYER DEFENDANTS did not compensate Plaintiffs for their labor by
4 making any fringe benefit contributions that could offset the prevailing wage rate of pay for the
5 classification of their labor.

6 18. JOINT EMPLOYER DEFENDANTS did not compensate Plaintiffs for their labor
7 during their entire employment by paying overtime wages when due and owing.

8 19. JOINT EMPLOYER DEFENDANTS did not compensate Plaintiffs for their labor by
9 paying for all hours worked ("SHAVING OF HOURS"). Typically JOINT EMPLOYER
10 DEFENDANTS had Plaintiffs and other workers work show up to the shop before the
11 scheduled start time and had them begin performing compensable labor. At the end of a work
12 day, when Plaintiffs were out on the field on a construction project, JOINT EMPLOYER
13 DEFENDANTS stopped paying Plaintiffs for their work and did not pay them for the time it
14 took them to load tools or equipment, drive back to the shop or be driven back to the shop, and
15 unload tools or equipment.

16 20. JOINT EMPLOYER DEFENDANTS misclassified Plaintiffs as Laborers, to pay them
17 a lower pay scale, when they worked as Plumbers and earned a higher pay scale for the
18 discharge of their labor on Prevailing Wage projects.

19
20 **COUNT ONE**
FEDERAL CLAIM

21 *Violation of the Fair Labor Standards Act*

22 29 U.S.C. §§ 207, 216(b), and 255(a)

Failure to Pay Overtime Wages and Minimum Wages

23 21. Plaintiffs re-allege and incorporate the allegations of paragraphs 1-20 as if fully stated
24 herein.
25

22. At all relevant times herein, plaintiffs' employment was subject to the provisions of the Fair Labor Standards Act of 1938, as amended ("FLSA"), 29 U.S.C. § 201, *et seq.*

23. JOINT EMPLOYER DEFENDANTS are enterprises engaged in commerce or in the production of goods for commerce as defined by 29 U.S.C. § 203 (r) & (s) and related Department of Labor regulations.

24. JOINT EMPLOYER DEFENDANTS routinely required and/or suffered or permitted Plaintiffs to work more than 40 hours per week, sometimes without paying them any wages at all for such overtime work, and routinely without paying them any overtime premium for hours worked in excess of 40 hours per week.

25. JOINT EMPLOYER DEFENDANTS routinely failed to pay Plaintiffs the prevailing wage for their labor on the PROJECTS which are Public Works Project, pursuant to California law, and require the payment of the Prevailing Wage which is a minimum wage of the State of California.

26. In failing to pay Plaintiffs overtime wages at one-and-one-half times their regular rate of pay, including hours for which Plaintiffs received no compensation, and in failing to pay the minimum wage JOINT EMPLOYER DEFENDANTS willfully violated the FLSA.

27. As a direct and proximate result of defendants' failure to pay proper wages under the FLSA, plaintiffs incurred general damages in the form of lost overtime wages and lost minimum wages in an amount to be proved at trial.

28. Defendants intentionally, with reckless disregard for their responsibilities under the FLSA, and without good cause, failed to pay plaintiffs their proper wages, and thus defendants are liable to plaintiffs for liquidated damages in an amount equal to their lost wages over a three year statute of limitations pursuant to 29 U.S.C. §§ 216(b) & 255(a) of the FLSA.

29. Plaintiffs were required to retain legal assistance in order to bring this action and, as such, are entitled to an award of reasonable attorney's fees pursuant to the FLSA.

COUNT TWO
PENDENT STATE CLAIM

Violation of California Labor Code §§ 510, 1771-1810, 1194, 1194.2 & 1197
Failure to Properly Pay Minimum Wages and Overtime on Public Works and Private
Construction Projects

30. Plaintiffs re-allege and incorporate the allegations of paragraphs 1-29 as if fully stated herein.

31. At all times mentioned herein, Plaintiffs were employed in execution of the PROJECT which was and is subject to the prevailing wage laws of the State of California pursuant to Labor Code §§ 1771 & 1774, regarding work undertaken on public construction projects. Pursuant to Labor Code §§ 1771 & 1774, all employees, including Plaintiffs, hired in execution of PROJECTS, shall be paid for their work on the PROJECTS not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work. Said Prevailing Wage rates are disseminated by the State of California's Department of Industrial Relations and pursuant to California laws and Regulations all contractors in the execution of a public works construction project are mandated by law to pay these minimum wages.

32. At all times mentioned herein, JOINT EMPLOYER DEFENDANTS, and each of them, were subject to the prevailing wage laws of the State of California pursuant to Labor Code §§ 1771, 1774 and 1815, regarding work undertaken on public works construction projects. Pursuant to Labor Code §§ 1771, 1774 and 1815, JOINT EMPLOYER DEFENDANTS, and each of them, had a duty to pay their employees on such projects, including Plaintiffs who were employed in the execution of the contract of the PROJECTS, not less than one and one-half times their basic prevailing rate of pay for holiday and overtime work, as specified in annual and semi-annual bulletins published by the California Department of Industrial Relations.

1 33. At all times mentioned herein, JOINT EMPLOYER DEFENDANTS, and each of them,
2 were subject to the overtime wage laws of the State of California pursuant to Labor Code §510,
3 regarding work undertaken on private construction projects. Pursuant to Labor Code §510,
4 JOINT EMPLOYER DEFENDANTS, and each of them, had a duty to pay their employees,
5 including Plaintiffs, who worked on such private constructions projects not less than the one and
6 one-half times their contractually agreed upon regular rate of pay for non-public works
7 construction projects for all hours worked in excess of 8 hours a day and 40 hours a week.

8 34. Plaintiffs are informed and believe and based thereon contend that for work performed
9 on PROJECTS, they were paid less than the required minimum prevailing rate for non-holiday
10 and non-overtime hours and less than the required minimum prevailing rate for holiday and
11 overtime work as required by Labor Code §§1771, 1774 and 1815; and for non-public works
12 construction projects they were paid less than one and one-half times their regular rate of pay, or
13 not at all, for the hours worked in excess of 8 hours a day and 40 hours a week as required by
14 California Labor Code § 510.

15 35. Plaintiffs therefore contend that for their work performed on PROJECTS, the said
16 JOINT EMPLOYER DEFENDANTS, and each of them, violated Labor Code §§ 1771, 1774
17 and 1815, specifically by failing and refusing to comply with the statutory duty to pay Plaintiffs'
18 or to ensure that Plaintiffs be paid, prevailing wages and prevailing wage for holiday and
19 overtime work as required by the contracts and by statute. Plaintiffs also contend that for non-
20 public works construction projects, the said JOINT EMPLOYER DEFENDANTS, and each of
21 them, violated Labor Code §510, specifically by failing and refusing to comply with the
22 statutory duty to pay Plaintiffs one and one-half times their regular rate of pay for hours worked
23 in excess of 8 hours a day or 40 hours a week as required by statute.

24 36. Pursuant to Labor Code § 1194, for their work on PROJECTS, Plaintiffs seek as earned
25 but were not paid minimum prevailing wages and required minimum prevailing wage for

1 holiday and overtime work; and for their work on non-public works construction projects,
 2 Plaintiffs seek as earned but unpaid overtime compensation for hours worked in excess of 8
 3 hours a day or 40 hours a week. Plaintiffs are entitled to and therefore request an award of pre-
 4 judgment interest on the unpaid wages set forth herein. Plaintiffs also seek an assessment under
 5 Labor Code § 1194.2.

6 37. Plaintiffs have incurred, and will continue to incur, attorneys' fees in the prosecution of
 7 this action and therefore demand such reasonable attorneys' fees and costs as set by the court
 8 pursuant to California Labor Code § 1194.

9 **COUNT THREE**
 10 **PENDENT STATE CLAIM**
 11 **BREACH OF CONTRACT -THIRD PARTY BENEFICIARY**

12 38. Plaintiffs re-allege and incorporate the allegations of paragraphs 1-37 as if fully stated
 13 herein.

14 39. Plaintiffs are informed and believe and based thereon allege that when they worked on
 15 various PROJECTS, there was a written CONTRACT in place, wherein workers on the
 16 PROJECTS were to be paid the applicable Prevailing Rate.

17 40. Plaintiffs are informed and believe and based thereon allege that the CONTRACTS
 18 required JOINT EMPLOYER DEFENDANTS, and each of them, to comply with all applicable
 19 legal requirements for work undertaken on public works projects and ensure its subcontractors
 20 to comply with all such laws, including payment of prevailing wages pursuant to Labor Code §§
 21 1194 and 1770 et seq.

22 41. Except as excused by the wrongful conduct of Defendants, Plaintiffs have performed all
 23 conditions required to be performed by Plaintiffs under the CONTRACTS.

24 42. The CONTRACTS are valid, enforceable, and was entered into with mutuality of
 25 contract, by an offer and acceptance, and for consideration.

1 43. Plaintiffs are informed and believe and based thereon allege that JOINT EMPLOYER
2 DEFENDANTS, and each of them, breached the CONTRACTS by failing to pay prevailing
3 wages as required by the CONTRACTS, and as required by California law, and by failing to
4 submit truthful and accurate Certified Payroll Records to the public bodies awarding the
5 CONTRACTS. Plaintiffs were damaged by the failure of JOINT EMPLOYER
6 DEFENDANTS, and each of them, to pay prevailing wages.

7 44. Plaintiffs have standing as intended third-party beneficiaries of the CONTRACTS to
8 assert said claims.

9 45. As a result of JOINT EMPLOYER DEFENDANTS' breach of the CONTRACTS, as
10 more fully set forth herein, Plaintiffs were damaged in an amount to be proved at trial.

11 46. Plaintiffs seek as contractual damages earned but unpaid wages being the difference
12 between the amount paid and the prevailing wage rate as determined by the Director of
13 Industrial Relations.

14 47. Plaintiffs are entitled to and therefore request an award of pre-judgment interest on the
15 unpaid wages set forth herein.

16 48. Plaintiffs are informed and believe and based thereon allege that the CONTRACTS at
17 issue provided that should a dispute arise in connection with the CONTRCATS that attorneys
18 fees would be awarded to the prevailing party. Plaintiffs have incurred, and will continue to
19 incur attorney fees in the prosecution of this action and therefore demand such reasonable
20 attorneys' fees as set by the court.

21 **COUNT FOUR**
22 **PENDENT STATE CLAIM**
23 *California Labor Code § 226 & 1174*
24 *Wage Stubs and Record Keeping*

25 49. Plaintiffs re-allege and incorporate the allegations of paragraphs 1-48 as if fully stated
herein.

1 50. At all times relevant hereto, JOINT EMPLOYER DEFENDANTS were subject to the
2 provisions of IWC Wage Order 16-2001, and Labor Code §§ 226 and 1174, which require
3 employer to keep written daily records of each of its employee's hours of work and meal breaks
4 and to maintain such records for at least three years; and to provide each employee with written
5 periodic wage payment setting forth, among other things, the dates of labor for which payment
6 of wages is made, the total hours of work for the pay period, the gross and net wages paid, all
7 deductions from those wages, and the name and address of the employer.

8 51. JOINT EMPLOYER DEFENDANTS knowingly and intentionally failed to provide
9 Plaintiffs with accurate, itemized wage statements in compliance with Labor Code §226. Such
10 failures in JOIN EMPLOYER DEFNDANTS' itemized wage statements included, among other
11 things, not accurately showing the number of all hours worked, including overtime hours, in
12 each pay period and/or incorrectly reporting gross wages earned.

13 52. As a direct result of JOINT EMPLOYER DEFNDANTS' failure, Plaintiffs were injured
14 and entitled to recover an amount to be proved at trial for actual damages, including that
15 measured by the unpaid wages, of not less than \$100.00 for each violation up to \$4,000.00.

16 53. Plaintiff has incurred, and will continue to incur attorney fees in the prosecution of this
17 action.

18 **COUNT FIVE**
19 **PENDENT STATE CLAIM**
California Labor Code Section 203
Waiting Time Penalties

20 54. Plaintiffs re-allege and incorporate the allegations of paragraphs 1-53 as if fully stated
21 herein.

22 55. At the time Plaintiffs' employment with Defendants was terminated, JOINT
23 EMPLOYER DEFNDANTS owed Plaintiffs certain unpaid overtime wages as previously
24 alleged, and such wages owed each Plaintiff were ascertainable at the time of termination.
25

1 56. Failure to pay wages owed at an employee's termination as required by Labor Code
2 §201 subjects the employer the payment of a penalty equaling up to 30 days wages, as provided
3 for in Labor Code § 203.

4 57. As of this date, JOINT EMPLOYER DEFENDANTS have failed and refused, and
5 continue to fail and refuse, to pay the amount due, thus making each such defendants liable to
6 Plaintiffs for penalties equal to thirty (30) days wages.

7 **COUNT SIX**

8 **PENDENT STATE CLAIM**

9 *Violation of California Business & Professions Code §17200*
10 *Restitution for Unfair Business Practices*

11 58. Plaintiffs re-allege and incorporate the allegations of paragraphs 1-57 as if fully stated
12 herein.

13 59. At all times relevant herein, Plaintiffs' employment with JOINT EMPLOYER
14 DEFNDANTS was subject to FLSA, California Labor Code and applicable Wage Orders
15 promulgated by the California Industrial Welfare Commission, which required all employees to
16 be paid certain minimum prevailing wages, overtime for work performed in excess of 40 hours
17 per week or 8 hours per day unless specifically exempted by the law, and also required plaintiffs
18 to be paid premium pay for missed rest periods.

19 60. At all times relevant herein, the employer of Plaintiffs, JOINT EMPLOYER
20 DEFANDANTS were subject to the California Unfair Trade Practices Act (California Business
21 and Professions Code § §17000 et seq.), but failed to pay the Plaintiffs certain minimum
22 prevailing wages, overtime pay as required by applicable state and federal laws and failed to pay
23 premium pay for missed meal/rest periods, to all of which Plaintiffs were legally entitled, with
24 JOINT EMPLOYER DEFNDANTS keeping to themselves the amount which should have been
25 paid to Plaintiffs.

61. In doing so, JOINT EMPLOYER DEFENDANTS violated California Unfair Trade Practices Act, Business and Professions Code §17200, et seq. by committing acts prohibited by applicable California Labor Code provisions, IWC Wage Orders, and the FLSA, and thus giving them a competitive advantage over other employers and businesses with whom JOINT EMPLOYER DEFENDANTS were in competition and who were in compliance with the law.

62. As a direct and proximate result of JOINT EMPLOYER DEFENDANTS' violations and failure to pay the required minimum prevailing wages and overtime pay, the Plaintiffs' rights under the law were violated and the Plaintiffs incurred general damages in the form of unpaid wages in amount to be proved at trial.

63. JOINT EMPLOYER DEFENDANTS had been aware of the existence and requirements of the Unfair Trade Practices Act and the requirements of state and federal wage and hour laws, but willfully, knowingly, and intentionally failed to pay Plaintiffs minimum prevailing wages and overtime pay due.

64. Plaintiffs, having been illegally deprived of the minimum prevailing wages and overtime pay to which they were legally entitled, herein seek restitution of such unpaid wages pursuant to the Business and Professions Code §17203.

65. Plaintiffs bring this count on their own behalf only, and as a claim for restitution, over a four year statute of limitations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

1. For compensatory damages per for all wages earned but not paid, all overtime wages earned and not paid and the failure to pay Prevailing Wages and applicable fringe benefits which are an item of prevailing wages in the amount to be proved at trial;
2. For liquidated damages per the FLSA equal to unpaid overtime and minimum wages;
3. For unpaid premium pay for rest periods which were not authorized or permitted;

1 4. For restitution of unpaid minimum prevailing wage, overtime pay and meal/rest period
2 premium pay;

3 5. For pre-judgment interest of 10% on the unpaid overtime compensation and unpaid
4 minimum wage under California Labor Code §§ 1194(a);

5 6. For "waiting-time" penalties under California Labor Code §203.

6 7. For "liquidated damages" under California Labor Code §1194.2 for the failure to pay
7 minimum wages;

8 8. For reasonable attorney's fees pursuant to California Labor Code §1194(a) and 29 U.S.C.
9 §216(b) of the FLSA;

10 9. For costs of suit herein;

11 10. For actual damages or a statutory penalty for non-compliant wage stubs; and

12 11. For such other and further relief as the Court may deem appropriate.

13 Dated: March 25, 2008

14 Respectfully submitted,

15
16 By: 

17 TOMAS E. MARGAIN
Attorneys for Plaintiffs

18 **DEMAND FOR JURY TRIAL**

19 Please take notice that Plaintiffs herein demand trial by jury in this action.

20 Dated: March 25, 2008

21 Respectfully submitted,

22
23 By: 

24 TOMAS E. MARGAIN
Attorneys for Plaintiffs


CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

Pursuant to Civil Local Rule 3-16, the undersigned certifies that as of this date, other than the named parties, there are no such interested entities or persons to report.

Dated: March 25, 2008

Respectfully submitted,

By:


TOMAS E. MARGAIN
Attorneys for Plaintiffs

BZ

JS 44 - No. CALIF (Rev. 4/97)

E-filing CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO)

I.(a) PLAINTIFFS

JOSE BARRIGA, JESUS TORRES URIBE, AND
JOEL MENDOZA

DEFENDANTS

PREFERRED PLUMBING, INC.; JAMES LUIS
RUIZ; EMILIO RUIZ; AND FEDERICO RUIZ

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

Stanislaus

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
TRACT OF LAND INVOLVED. Contra Costa

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

TOMAS E. MARGAIN, Bar No. 193555
1550 Bryant Street, Suite 725
San Francisco, CA 94103 Telephone: 415-861-9600

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

(For diversity cases only)

- | | | | |
|---|---|---|---|
| Citizen of This State | PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 161 Medicare Act <input type="checkbox"/> 162 Recovery of Defaulted Student Loans (Excl Veterans) <input type="checkbox"/> 163 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury Med Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth In Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 680 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 750 Other Labor Litigation <input type="checkbox"/> 751 Empl.Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (US Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 28 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/CC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 860 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 881 Agricultural Acts <input type="checkbox"/> 882 Economic Stabilization Act <input type="checkbox"/> 883 Environmental Matters <input type="checkbox"/> 884 Energy Allocation Act <input type="checkbox"/> 885 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 980 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 610 Motion to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 630 General <input type="checkbox"/> 635 Death Penalty <input type="checkbox"/> 640 Mandamus & Other <input type="checkbox"/> 650 Civil Rights <input type="checkbox"/> 655 Prison Condition			

VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

29 U.S.C. 201, et seq.
Wage & Hour --overtime violation

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$ 100,000.00

☒ CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE A "X" IN ONE BOX ONLY) ☒ SAN FRANCISCO/OAKLAND ☐ SAN JOSE

DATE 3/25/08

SIGNATURE OF ATTORNEY OF RECORD